



**IN THE CIRCUIT COURT OF
ST. CLAIR COUNTY, ALABAMA
PELL CITY DIVISION**

**EXHIBIT
A**

**ALABAMA MUNICIPAL INSURANCE)
CORPORATION, a corporation, as subrogee)
of the City of Pell City)**

Plaintiff,

v.

CASE No.: 75-CV-2016-_____

**TIMOTHY MANLEY PHIFER, an individual;)
TIMOTHY MANLEY PHIFER TRUST, and)
PHOENIX SERVICES OF ALABAMA, LLC,)
an Alabama Limited Liability Company;)**

Defendants.

COMPLAINT

I. PARTIES

1. Plaintiff Alabama Municipal Insurance Corporation (“AMIC”) is and was at all times material herein an Alabama corporation, whose principal place of business is in Montgomery, Alabama.

2. Defendant Timothy Phifer is, upon information and belief an individual above the age of nineteen and, at all times herein, a resident of St. Clair County, Alabama.

3. Defendant Timothy Manley Phifer Trust is, upon information and belief, and trust under the laws of the State of Alabama and whose principal place of

business is in St. Clair County, Alabama.

4. Defendant Phoenix Services of Alabama, LLC is an Alabama limited liability company whose principal place of business is in St. Clair County, Alabama.

II. JURISDICTION.

5. This Court has jurisdiction pursuant to Alabama Code (1975) §12-11-30 and venue is proper in this Court pursuant to Alabama Code (1975) §6-3-7, and Rule 82 of the *Alabama Rules of Civil Procedure*.

III. FACTUAL ALLEGATIONS

6. Defendant Timothy Manley Phifer is the only trustee and/or beneficiary of the Timothy Manley Phifer Trust, which is the sole member of Phoenix Services of Alabama, LLC.

7. Each defendant is the alter-ego of the other.

8. On November 9, 2015, Defendants contracted with the City of Pell City, Alabama to remove or demolish a brick smokestack on Pell City's property.

9. Defendants agreed to indemnify and hold the City harmless from any damage resulting from their activities.

10. Defendants agreed to provide insurance naming the City of Pell City as an additional insured for any injury caused by the activities of the Defendants.

11. On or about November 24, 2015, while Defendants were removing the smokestack, the Defendants damaged Pell City's 2014 Komatsu tractor.

12. Defendants failed to indemnify and hold harmless Pell City for the property damage they caused.

13. Defendants failed to add Pell City as an additional insured on their policy of insurance that would cover the City for the loss of its property.

14. At all times herein, the City of Pell City was insured with a commercial property policy with Plaintiff AMIC.

15. AMIC has paid Pell City for its property damage in the amount of \$122,750.00 and is subrogated to its interest.

III. CAUSES OF ACTION

COUNT ONE – NEGLIGENCE/WANTONNESS

16. Plaintiff incorporates by reference the averments in Paragraphs 1-15 of its Complaint as if the same were set forth herein.

17. Defendants had a duty to not to damage Pell City's property.

18. Defendants breached that duty by damaging Pell City's Komatsu tractor. Pell City loss the use of its property.

19. Plaintiff AMIC was damaged as a result of that breach.

WHEREFORE AMIC requests damages in the amount of \$123,750.00 plus costs, fees, interest, and any other relief to which it may be entitled from this Court.

COUNT TWO – BREACH OF CONTRACT

20. Plaintiff incorporates by reference the averments in Paragraphs 1-19 of

its Complaint as if the same were set forth herein.

21. Defendants had a contract with the City of Pell City to indemnify and hold the City harmless from any damage to Pell City property.

22. Defendants had a contract with the City of Pell City to add the City as an additional insured on their insurance policy to cover any property damage done to the City of Pell City.

23. Defendants breached their contract by failing to comply with these provisions.

24. Plaintiff has been damaged as a result of Defendants breach of contract.

WHEREFORE AMIC requests damages in the amount of \$123,750.00 plus costs, fees, interest, and any other relief to which it may be entitled from this Court

/s/ Scott M. Speagle

SCOTT M. SPEAGLE (SPE 050)

FRANK E. (CHIP) BANKSTON (BAN 012)

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PLEASE SERVE DEFENDANTS VIA CERTIFIED MAIL AS FOLLOWS:

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/s/ Scott M. Speagle
OF COUNSEL